

1 SENATE BILL NO. 138

2 INTRODUCED BY D. WANZENRIED

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE PRACTICE COMMONLY KNOWN AS
 6 INSURANCE STUFFING BY SPECIFYING WHEN CORPORATIONS MAY PROPERLY TAKE A
 7 DIVIDENDS-RECEIVED DEDUCTION FOR DIVIDENDS RECEIVED FROM INSURANCE COMPANIES;
 8 SPECIFYING HOW TO CALCULATE THE APPROPRIATE DIVIDENDS-RECEIVED DEDUCTION IN THOSE
 9 CIRCUMSTANCES; ~~APPLYING SPECIAL RULES TO CAPTIVE INSURANCE COMPANIES~~; DISREGARDING
 10 THE PERMANENT DEFERRAL OF GAIN RECOGNITION FOR CERTAIN TRANSACTIONS; AUTHORIZING
 11 THE DEPARTMENT OF REVENUE TO INCLUDE IN THE GROSS INCOME THE TAXPAYER'S PRO RATA
 12 SHARE OF ANY OF THOSE INSURERS' CURRENT EARNINGS AND PROFITS IN THAT TAXABLE YEAR;
 13 ~~AMENDING SECTION 33-2-705, MCA~~; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A
 14 RETROACTIVE APPLICABILITY DATE."

15

16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17

18 NEW SECTION. **Section 1. Definitions.** For the purposes of [sections 1 through 7], unless otherwise
 19 required by the context, the following definitions apply:

20 (1) "Capitalization percentage" means the appropriate percentage established in [section 2].

21 (2) "Combined reporting group" means those corporations whose income is required to be included in
 22 the same combined report pursuant to 15-31-301 or 15-31-322.

23 (3) "Commonly controlled group" means a parent corporation and any one or more corporations or
 24 chains of corporations connected through stock ownership or constructive ownership with the parent if:

25 (a) the parent owns stock with more than 50% of the voting power of at least one corporation; and

26 (b) stock cumulatively representing more than 50% of the voting power of each of the corporations,
 27 except the parent, is owned by the parent, one or more corporations described in subsection (3)(a), or one or
 28 more other corporations that satisfy the conditions of this subsection (3)(b), if applicable.

29 (4) "Direct written premiums" means amounts written by an insurance company in consideration for
 30 insurance and annuity contracts issued to policyholders.

1 (5) "Dividend" means, for purposes of calculating the dividends-received deduction for any tax year
2 described in [section 2], ~~80% of the amount of the qualified dividends~~ THE TOTAL AMOUNT OF QUALIFIED DIVIDENDS
3 ALLOWED AS A DEDUCTION FOR FEDERAL INCOME TAX PURPOSES received by the corporation from the insurer
4 corporation.

5 (6) "Five-year average" means the aggregate net written premiums or total income, as the case may be,
6 over the 5 immediately preceding calendar or fiscal years, divided by five. If an insurance company in the
7 commonly controlled group has been in existence for fewer than 5 years, its aggregate net written premiums and
8 total income must each be multiplied by five and divided by the number of years of its existence. If an insurance
9 company does not have a regulatory filing requirement, the period covered is the fiscal year used for the
10 insurance company's financial statements. The use of either the calendar year or fiscal year that is used for the
11 determination of the first tax year 5-year average is considered an accounting method under [sections 1 through
12 7] and may be changed in subsequent tax years only with the written consent of the department.

13 (7) (a) "Investment income" means an insurance company's earnings from its investment portfolio,
14 including interest, dividends, realized gains or losses, and rent, that, unless otherwise provided in subsections
15 (7)(b) through (7)(d), is required to be reported in an insurer's statutory annual statement in accordance with the
16 annual statement instructions and accounting practices and procedures manual promulgated by the national
17 association of insurance commissioners.

18 (b) Except for reinsurance transactions, realized gains or losses do not include losses incurred in
19 transactions with a person that is a member of the taxpayer's or the insurance company's commonly controlled
20 group.

21 (c) Investment income does not include dividends from a person that is a member of the commonly
22 controlled group. Intercompany dividends that have been eliminated from investment income as would be
23 required to be reported in the statutory annual statement in accordance with the annual statement instructions
24 and accounting practices and procedures manual promulgated by the national association of insurance
25 commissioners may not again be eliminated for this purpose.

26 (d) Investment income does not include income included in the taxpayer's combined report filed in
27 accordance with this chapter.

28 (8) "Insurer" has the meaning provided in 33-1-201.

29 (9) (a) "Net income attributable to investment income" means net income of the insurer multiplied by a
30 ratio, the numerator of which is the insurer's gross investment income from interest, dividends (other than

1 dividends from members of the taxpayer's commonly controlled group), rent, and realized gains or losses, and
 2 the denominator of which is the insurer's gross income (other than dividends from members of the taxpayer's
 3 commonly controlled group) from all sources.

4 (b) For the purposes of this definition, if an insurer is required to file a statutory annual statement
 5 pursuant to the annual statement instructions and accounting practices and procedures manual promulgated by
 6 the national association of insurance commissioners, "net income" means net income required to be reported in
 7 the insurer's statutory annual statement.

8 (10) (a) "Net written premiums" means direct written premiums plus premiums from reinsurance
 9 assumed, less premiums ceded to a reinsurance company, as would be required to be reported in an insurer's
 10 statutory annual statement in accordance with the annual statement instructions and accounting practices and
 11 procedures manual promulgated by the national association of insurance commissioners.

12 (b) Net written premiums from life insurance contracts are determined by multiplying the net written
 13 premiums received, assumed, or ceded by 1.3.

14 (c) Net written premiums from financial guaranty insurance contracts are determined by multiplying the
 15 net written premiums received, assumed, or ceded by the lesser of 2.3 or an amount that would cause the ratio
 16 of the 5-year average net written premiums for all financial guaranty insurance companies in the commonly
 17 controlled group to the 5-year average total income for all financial guaranty insurance companies in the
 18 commonly controlled group to be equal to the applicable capitalization percentage.

19 ~~(11) (a) "Predominantly captive insurance group" means all insurer members of a commonly controlled~~
 20 ~~group that has a capitalization in excess of \$10 million that:~~

21 ~~—— (i) receive more than 50% of their net written premiums from members of the commonly controlled group,~~
 22 ~~determined without regard to the weighting factors described subsection (10)(b) or (10)(c); or~~

23 ~~—— (ii) have a ratio determined under [section 3(1)(b)] that is greater than 50% when determined;~~

24 ~~—— (b) For the purposes of this definition, premiums received or accrued from a member of the insurance~~
 25 ~~company's commonly controlled group do not include premiums if the direct insurance risks ceded by affiliates~~
 26 ~~and assumed by the insurance company originated with a person that is not a member of the insurance~~
 27 ~~company's commonly controlled group;~~

28 ~~(12)~~(11) "Premiums from reinsurance assumed" means amounts received or accrued by an insurance
 29 company in consideration for liabilities it assumes from another insurance company.

30 ~~(13)~~(12) "Qualified dividend" means a dividend received by a corporation during the tax year from a

1 corporation that is an insurer, whether or not the insurer is engaged in business in Montana, if at the time of each
 2 dividend payment at least 80% of each class of stock of the insurer was owned, directly or indirectly, by the
 3 corporation receiving the dividend.

4 ~~(14)~~(13) "Total income" means net written premiums plus investment income.

5
 6 **NEW SECTION. Section 2. Deduction of dividends received by corporations -- capitalization**
 7 **percentage.** (1) For the purposes of calculating the dividends-received deduction allowed for Montana purposes,
 8 the amount of dividends must be multiplied by the appropriate capitalization percentage determined under
 9 subsections (2) through (4).

10 (2) If the ratio of the 5-year average net written premiums for all insurance companies in a commonly
 11 controlled group to the 5-year average total income for all insurance companies in the commonly controlled group
 12 for the tax year is greater than or equal to 60%, then the capitalization percentage is 100%.

13 (3) If the ratio of the 5-year average net written premiums for all insurance companies in a commonly
 14 controlled group to the 5-year average total income for all insurance companies in the commonly controlled group
 15 for the tax year is less than 60% but greater than 10%, then the capitalization percentage is equal to the following
 16 fraction, expressed as a percentage:

17 (a) the numerator is the 5-year average net written premiums for the tax year; and

18 (b) the denominator is 60% of the 5-year average total income for that tax year.

19 (4) If the ratio of the 5-year average net written premiums for all insurance companies in a commonly
 20 controlled group to the 5-year average total income for all insurance companies in the commonly controlled group
 21 for the tax year is 10% or less, then the capitalization percentage is 0%.

22
 23 ~~———— NEW SECTION. Section 3. Deduction of dividends received from insurance company that insures~~
 24 ~~risks of member of commonly controlled group.~~ (1) A deduction is not allowed for dividends attributable to
 25 ~~premiums received or accrued by an insurance company from a member of the insurance company's commonly~~
 26 ~~controlled group. Premiums received or accrued from a member of the insurance company's commonly controlled~~
 27 ~~group do not include premiums if the direct insurance risks ceded by affiliates and assumed by the insurance~~
 28 ~~company originated with a person that is not a member of the insurance company's commonly controlled group.~~
 29 ~~Dividends attributable to premiums received or accrued from a member of a commonly controlled group is equal~~
 30 ~~to total dividends received multiplied by the greater of:~~

1 ~~———(a) except as provided in subsection (2), the ratio of net written premiums from a member of the insurance~~
 2 ~~company's commonly controlled group divided by total net written premiums; or~~

3 ~~———(b) (i) for a property casualty insurer, the ratio of the underwriting risk associated with a member of the~~
 4 ~~commonly controlled group's insurance contracts to the insurance company's total underwriting risks for all~~
 5 ~~insurance contracts. The underwriting risk is the underwriting risk reserves, which are losses plus expense~~
 6 ~~risk-based capital after discount, calculated using the risk-based capital instructions and report promulgated by~~
 7 ~~the national association of insurance commissioners or any substantially equivalent successor instructions and~~
 8 ~~report as the report read on January 1 of the year in which the taxpayer's tax year begins.~~

9 ~~———(ii) for a life insurer, the ratio of aggregate reserves for life, accident, and health contracts plus liability~~
 10 ~~for deposit-type contracts plus contract claims held for policies issued to members of the insurance company's~~
 11 ~~commonly controlled group divided by total aggregate reserves for life, accident, and health contracts plus liability~~
 12 ~~for deposit-type contracts plus contract claims.~~

13 ~~———(2) Net written premiums do not include premiums received or accrued from another member of the~~
 14 ~~insurance company's commonly controlled group. Premiums from another member of the commonly controlled~~
 15 ~~group is the greater of:~~

16 ~~———(a) net written premiums from a member of the insurance company's commonly controlled group; or~~

17 ~~———(b) (i) for a property casualty insurer, the net written premiums received or accrued by the insurance~~
 18 ~~company multiplied by the ratio of the underwriting risk associated with the member of the commonly controlled~~
 19 ~~group's insurance contracts to the insurance company's total underwriting risks for all insurance contracts. The~~
 20 ~~underwriting risk is the underwriting risk reserves, which is loss plus expense risk-based capital after discount,~~
 21 ~~calculated using the risk-based capital instructions and report promulgated by the national association of~~
 22 ~~insurance commissioners or any substantially equivalent successor instructions and report as the report read on~~
 23 ~~January 1 of the year in which the taxpayer's tax year begins.~~

24 ~~———(ii) for a life insurer, net written premiums received or accrued by the insurance company multiplied by~~
 25 ~~the ratio of aggregate reserves for life, accident, and health contracts plus liability for deposit-type contracts plus~~
 26 ~~contract claims held for policies issued to members of the insurance company's commonly controlled group~~
 27 ~~divided by total aggregate reserves for life, accident, and health contracts plus liability for deposit-type contracts~~
 28 ~~plus contract claims.~~

29

30 **NEW SECTION. Section 3. Deductions not allowed for certain expenses.** (1) A deduction is not

1 allowed for any expense under subsection (2) that is paid or incurred to an insurer if the insurer is a member of
2 the taxpayer's commonly controlled group and the amount paid or incurred would constitute income to the insurer
3 if the insurer were subject to the Montana income or franchise tax.

4 (2) (a) The following interest amounts payable to an insurer in the same commonly controlled group are
5 disallowed:

6 (i) interest paid or incurred to an insurer in the taxpayer's commonly controlled group with respect to
7 indebtedness, other than qualified marketable debt instruments, the principal amount of which is attributable to
8 a contribution of money by a noninsurer member of the taxpayer's commonly controlled group to the capital of
9 an insurer member of that group, including the principal amount of a loan arising from a direct or indirect transfer
10 of money from that contribution to capital from one insurer to another insurer of the same commonly controlled
11 group;

12 (ii) interest paid or incurred to an insurer with respect to a note or other debt instrument, other than
13 qualified marketable debt instruments, contributed to the capital of an insurer with respect to its stock by a
14 noninsurer member of the commonly controlled group;

15 (iii) interest paid or incurred within 5 years after the direct or indirect acquisition of the insurer by a
16 member of the commonly controlled group, other than interest on qualified marketable debt instruments;

17 (iv) interest paid or incurred during the tax year to any insurer in the commonly controlled group multiplied
18 by the disqualifying percentage. The disqualifying percentage is an amount equal to 100% less the capitalization
19 percentage provided for in [section 2(2), (3), or (4)] for that tax year whether or not a dividend is paid or accrued.

20 ~~(v) interest determined by multiplying the amount of interest paid or incurred to an insurer in the~~
21 ~~commonly controlled group by the ratio of the commonly controlled group determined under [section 3(1)] for the~~
22 ~~tax year, whether or not a dividend was paid or accrued in that year.~~

23 (b) The following noninterest expenses are disallowed:

24 (i) expenses attributable to property formerly held by the taxpayer or a member of the taxpayer's
25 commonly controlled group that was acquired by the insurer in a transaction in which gain was realized but not
26 recognized, including any income deferred under [section 5 4], by the taxpayer or a member of its commonly
27 controlled group;

28 (ii) expenses attributable to property purchased with the proceeds attributable to a contribution by a
29 noninsurer member of the taxpayers' commonly controlled group to the capital of an insurer member of that
30 group, including amounts attributable to a direct or indirect transfer of money from that contribution from one

1 insurer to another insurer in the same group.

2 (3) Expenses that may be disallowed by more than one expense exclusion in subsection (2) may be
3 included only in the exclusion that will result in the highest disallowance amount.

4 (4) For purposes of this section, the following definitions apply:

5 (a) "Qualified marketable debt instruments" means publicly available debt instruments of all noninsurer
6 members of the commonly controlled group issued, but only to the extent that the aggregate principal amount of
7 publicly available debt instruments held by all insurer members of the commonly controlled group constitutes less
8 than 10% of the total outstanding principal amount of publicly available debt instruments issued by all noninsurer
9 members.

10 (b) "Publicly available debt instruments" means debt instruments available to the general public, including
11 bonds, debentures, and negotiable instruments that are rated by a nationally recognized statistical rating
12 organization, as that term is used in Rule 15c3-1(c)(2)(vi)(F) under the Securities Exchange Act of 1934, in one
13 of its generic rating categories that signifies investment grade.

14

15 **NEW SECTION. Section 4. Transfer of property to insurer.** (1) (a) Except as provided in subsection
16 (1)(b), in connection with any exchange described in section 332, 351, 354, 356, or 361 of the Internal Revenue
17 Code, 26 U.S.C. 332, 351, 354, 356, or 361, when a taxpayer transfers property to an insurer, the insurer, for
18 purposes of determining the extent to which gain is recognized on that transfer, is not, for the purposes of this
19 section, considered a corporation.

20 (b) The provisions of subsection (1)(a) do not apply to any of the following types of transactions, unless
21 that transaction has the effect, either directly or indirectly, of transferring appreciated property from a taxpayer
22 subject to tax under this chapter or a member of the taxpayer's combined reporting group, to an insurer:

23 (i) an exchange or transfer pursuant to section 368(a)(2)(D) or (a)(2)(E) of the Internal Revenue Code,
24 26 U.S.C. 368(a)(2)(D) or (a)(2)(E);

25 (ii) a transfer of stock in an 80%-owned insurer for the purpose of filing a consolidated tax return or for
26 financial or regulatory reporting; or

27 (iii) a transfer or exchange of publicly owned stock of the parent corporation.

28 (c) (i) If a transaction described in subsection (1)(b) would qualify under that subsection except that the
29 transaction has the effect, directly or indirectly, of transferring appreciated property from a taxpayer or a member
30 of the taxpayer's combined reporting group, subject to tax under this chapter, to an insurer, then, if the property

1 is used in the active trade or business of the insurer, subsection (2) applies to that transfer.

2 (ii) For purposes of this subsection (1)(c), "appreciated property" means property whose fair market value,
3 as of the date of the transfer subject to this section, exceeds its adjusted basis as of that date.

4 (2) (a) If property subject to subsection (1)(a) or (6) is transferred to an insurer for use in the active
5 conduct of a trade or business of the insurer, then any gain otherwise required to be recognized under subsection
6 (1)(a) or (6) is deferred until the date that:

7 (i) the property is no longer owned by an insurer in the taxpayer's commonly controlled group or a
8 member of the taxpayer's combined reporting group;

9 (ii) the property is no longer used in the active conduct of the insurer's trade or business or the trade or
10 business of another member in the taxpayer's combined reporting group; or

11 (iii) the holder of the property is no longer held by an insurer in the commonly controlled group of the
12 transferor or a member of the taxpayer's combined reporting group.

13 (b) Any of the events described in subsection (2)(a) must be treated as a disposition of the property
14 under this subsection (2), irrespective of whether any other provision of this chapter or in the Internal Revenue
15 Code would otherwise permit nonrecognition treatment of the transaction described in this subsection (2).

16 (c) An insurer that becomes a member of the taxpayer's commonly controlled group or a corporation that
17 becomes a member of the taxpayer's combined reporting group as a result of a transaction referred to in this
18 subsection (2) must be treated as a member of the taxpayer's commonly controlled group or a member of the
19 taxpayer's combined reporting group at the time of the transfer for purposes of this subsection (2).

20 (d) For purposes of this subsection (2), stock of an insurance subsidiary constitutes property used in the
21 active trade or business of the insurer.

22 (e) This subsection (2) does not apply to any property described by section 367(a)(3)(B) of the Internal
23 Revenue Code, 26 U.S.C. 367(a)(3)(B).

24 (f) If the deferred gain required to be taken into account under this subsection (2) is business income
25 as defined in 15-31-302, the gain must be apportioned using the apportionment percentage for the tax year that
26 the gain is required to be taken into account under this subsection (2). Except as provided in 15-31-312 and rules
27 adopted to implement that section, for purposes of the sales factor for that tax year, the transaction giving rise
28 to that gain must be treated as a sale occurring in the tax year the gain is taken into account. The amount of any
29 gain required to be recognized under this subsection (2) upon any disposition described in this subsection (2)
30 may not exceed the lesser of the deferred gain or the gain realized in the transaction in which gain is required

1 to be recognized under this subsection (2).

2 (g) For purposes of computing the amount of gain required to be recognized under this subsection (2),
3 appropriate adjustments may be made, pursuant to rules adopted by the department, to the basis of stock to
4 reflect the disallowance of any expenses under [section ~~4(2)~~ 3(2)].

5 (3) The department may adopt rules providing for an annual reporting requirement in the form of a
6 statement or other form, to be attached to the transferor taxpayer's return, regarding the current ownership of any
7 property for which any gains were previously deferred pursuant to subsection (2). If the transferor taxpayer fails
8 to provide information required by the department, the department may, in lieu of the year in subsection (2)(f),
9 require that the transferor taxpayer take those gains into account in the first tax year in which the current
10 ownership of the property is not reported unless the property is still owned by the transferee and the failure to
11 provide the information was due to reasonable cause and not willful neglect. If a taxpayer fails to satisfy the
12 reporting requirements of this subsection (3), then a notice of proposed deficiency assessment resulting from
13 adjustments attributable to gains previously deferred pursuant to subsection (2), with respect to which the
14 reporting requirements were not satisfied, may be mailed to the taxpayer within 4 years from the date on which
15 the reporting requirements are satisfied by the taxpayer.

16 (4) Unless otherwise provided by rules adopted by the department, a transfer by a taxpayer of an interest
17 in a partnership to an insurer in a transaction described in subsection (1)(a) must be treated as a transfer to that
18 insurer of the taxpayer's pro rata share of the assets of the partnership.

19 (5) (a) A distribution described by section 355 of the Internal Revenue Code, 26 U.S.C. 355, or section
20 356 of the Internal Revenue Code, 26 U.S.C. 356, as it relates to section 355 of the Internal Revenue Code, must
21 be treated as an exchange under this section, whether or not the distribution is an exchange. This subsection
22 (5)(a) does not apply to a distribution in which:

23 (i) the distributing corporation is an insurer; or

24 (ii) the distributee is a person other than an insurer.

25 (b) For a distribution described in section 355 of the Internal Revenue Code, 26 U.S.C. 355, or section
26 356 of the Internal Revenue Code, 26 U.S.C. 356, as it relates to section 355 of the Internal Revenue Code, by
27 a taxpayer to an insurer, the department shall adopt rules regarding the recognition of gain to prevent the removal
28 of gain inherent in property at the time of a transfer from taxation.

29 (6) For purposes of this section, a transfer of property to an insurer as a contribution to capital of that
30 insurer by one or more persons who, immediately after the transfer, own, within the meaning of section 318 of

1 the Internal Revenue Code, 26 U.S.C. 318, stock possessing at least 80% of the total combined voting power
 2 of all classes of stock of that insurer that are entitled to vote must be treated as an exchange of that property for
 3 stock of the insurer equal in value to the fair market value of the property transferred.

4 (7) (a) In the case of any liquidation to which section 332 of the Internal Revenue Code, 26 U.S.C. 332,
 5 applies, unless otherwise provided in rules adopted by the department:

6 (i) sections 337(a) and (b)(1) of the Internal Revenue Code, 26 U.S.C. 337(a) and (b)(1), do not apply
 7 if the 80% distributee is an insurer; and

8 (ii) if the distributor is an insurer, the distributee shall treat the distribution as a distribution from the
 9 insurer's earnings and profits.

10 (b) For purposes of subsection (7)(a)(ii), the distribution from earnings and profits must be treated as
 11 a dividend eligible for a deduction, to the extent otherwise provided in [section 2], as if it was actually distributed
 12 as a dividend.

13 (8) (a) Upon an adequate showing by a taxpayer that a transaction referred to in subsection (1) or (7)
 14 would not violate the purposes of this section to prevent the removal of gain inherent in property at the time of
 15 a transfer from taxation under this section, the department may grant relief from the application of this section.

16 (b) In a proceeding contesting the department's actions under this section, relief may be granted a
 17 taxpayer only upon a specific finding by the state tax appeal board or district court that the contested transfer did
 18 not remove gain inherent in property at the time of transfer from taxation under this section.

19
 20 **NEW SECTION. Section 5. Includable in gross income.** (1) (a) The department may include in the
 21 gross income of the taxpayer or a member of the taxpayer's combined reporting group in that tax year the
 22 taxpayer's pro rata share or the pro rata share of a member of the taxpayer's combined reporting group of any
 23 of those insurers' current earnings and profits in that tax year, but not to exceed an amount equal to the specific
 24 insurer's net income attributable to investment income for that year minus that insurer's net written premiums
 25 received in that same tax year, if:

26 (i) for any tax year, an insurer is a member of a taxpayer's commonly controlled group;

27 (ii) the ratio of the 5-year average net written premiums to the 5-year average total income of all insurers
 28 in the commonly controlled group is equal to or less than 0.10 ~~or, if the insurer members of the commonly~~
 29 ~~controlled group constitute a predominantly captive insurance group, the ratio is equal to or less than 0.40;~~ and

30 (iii) the accumulation of earnings and profits of the insurers in the commonly controlled group had a

1 substantial purpose of avoidance of taxes on, according to, or measured by income of this state or any other
2 state.

3 (b) The amount included in gross income pursuant to subsection (1)(a) must be treated as a dividend
4 received from an insurance company during the tax year, and to the extent applicable, [section 2] applies to that
5 amount.

6 (2) To the extent that the amounts are included pursuant to subsection (1) in the gross income of a
7 taxpayer or a member of the taxpayer's combined reporting group, those amounts may not again be considered
8 as investment income in the application of the ratio in subsection (1)(a)(ii).

9 (3) (a) The amounts included in gross income under subsection (1) may not again be included in gross
10 income when subsequent distributions are made to:

11 (i) the taxpayer or a member of the taxpayer's combined reporting group;

12 (ii) another taxpayer that acquires an interest in the stock of the taxpayer or a member of the taxpayer's
13 combined reporting group with respect to which subsection (1) was applied; or

14 (iii) any successor or assign of the respective taxpayers or a member of the taxpayer's combined
15 reporting group described in this subsection (3).

16 (b) For purposes of applying this subsection (3), distributions from an insurer are considered first made
17 from amounts included under subsection (1).

18 (4) For purposes of this section, the terms "net written premiums", "5-year average net written
19 premiums", and "5-year average total income" have the same meaning as applicable for [section 2], whether or
20 not a dividend is actually received from any insurer member of the taxpayer's commonly controlled group in that
21 tax year.

22 (5) For the purposes of this section, the taxpayer's pro rata share of the current earnings and profits of
23 an insurer member of a commonly controlled group is the amount that would have been received as a dividend
24 by the taxpayer or a member of the taxpayer's combined reporting group if:

25 (a) the insurer had directly distributed its current earnings and profits with respect to its stock held by
26 the taxpayer or a member of the taxpayer's combined reporting group; and

27 (b) the insurer holds the stock of another insurer and all other insurer members of the taxpayer's
28 commonly controlled group had distributed the same current earnings and profits with respect to their stock, in
29 the same tax year, until amounts were received as a dividend by the taxpayer or a member of the taxpayer's
30 combined reporting group from an insurer member of the commonly controlled group.

1 (6) In the application of this section, amounts treated as a dividend received by a partnership are
 2 considered a dividend received by each partner that is a member of the commonly controlled group, either directly
 3 or through a series of tiered partnerships.

4 (7) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO AN INSURER INVOLVED IN A PROCEEDING UNDER THE
 5 INSURERS SUPERVISION, REHABILITATION, AND LIQUIDATION ACT, TITLE 33, CHAPTER 2, PART 13, OR ANY SIMILAR
 6 PROCEEDING BROUGHT BY ANY OTHER STATE INSURANCE COMMISSIONER.

7
 8 **NEW SECTION. SECTION 6. LEGITIMATE BUSINESS PURPOSE.** (1) IF A TAXPAYER'S RATIO OF THE 5-YEAR
 9 AVERAGE NET WRITTEN PREMIUMS FOR ALL INSURANCE COMPANIES IN A COMMONLY CONTROLLED GROUP TO THE 5-YEAR
 10 AVERAGE TOTAL INCOME FOR ALL INSURANCE COMPANIES IN THE COMMONLY CONTROLLED GROUP FOR THE TAX YEAR IS
 11 GREATER THAN OR EQUAL TO 60%, AS DETERMINED UNDER [SECTION 2], THEN THE PROVISIONS OF [SECTIONS 1 THROUGH
 12 7] DO NOT APPLY.

13 (2) IF A TAXPAYER'S RATIO OF THE 5-YEAR AVERAGE NET WRITTEN PREMIUMS FOR ALL INSURANCE COMPANIES
 14 IN A COMMONLY CONTROLLED GROUP TO THE 5-YEAR AVERAGE TOTAL INCOME FOR ALL INSURANCE COMPANIES IN THE
 15 COMMONLY CONTROLLED GROUP FOR THE TAX YEAR IS LESS THAN 60%, AS DETERMINED UNDER [SECTION 2], AND UPON
 16 AN ADEQUATE SHOWING BY A TAXPAYER THAT A TRANSACTION REFERRED TO IN [SECTIONS 2 THROUGH 5] WAS ENTERED
 17 INTO WITH A LEGITIMATE BUSINESS PURPOSE, THE DEPARTMENT MAY GRANT RELIEF FROM THE APPLICATION OF [SECTIONS
 18 1 THROUGH 7].

19
 20 **NEW SECTION. Section 7. Rulemaking authority.** ~~To implement the provisions of [sections 1 through~~
 21 ~~7], the~~ THE department may adopt rules that it considers necessary TO IMPLEMENT AND ADMINISTER THE PROVISIONS
 22 OF [SECTIONS 1 THROUGH 6]., including but not limited to the following:

23 ~~—— (1) establish a comparable weighting factor as described in the definition of net written premiums for new~~
 24 ~~lines of insurance not addressed in [sections 1 through 7];~~

25 ~~—— (2) for purposes of determining the applicable ratios described in [sections 3 and 4], the inclusion or~~
 26 ~~exclusion of items of investment income to eliminate the effects of devices designed to manipulate those ratios~~
 27 ~~for purposes of avoiding a tax imposed by this chapter;~~

28 ~~—— (3) for purposes of determining the applicable ratios described in [sections 3 and 4], the inclusion or~~
 29 ~~exclusion of items of investment income to prevent distortion causing significant reduction in those ratios so that~~
 30 ~~the result does not reflect a valid business purpose;~~

1 ~~———— (4) providing for an annual reporting requirement in the form of a statement or other form, to be attached~~
 2 ~~to the transferor taxpayer's return, regarding the current ownership of any property for which any gains were~~
 3 ~~previously deferred pursuant to [section 5];~~

4 ~~———— (5) to carry out the purposes of [section 5], which is to prevent the removal of gain inherent in property~~
 5 ~~at the time of a transfer from taxation under this chapter. The rules may provide for appropriate adjustments to~~
 6 ~~the amount of deferred income described in [section 5] to avoid the double inclusion of income for situations~~
 7 ~~including but not limited to the property transferred to an insurer member of the commonly controlled group that~~
 8 ~~is later acquired by a noninsurer member of the taxpayer's combined reporting group.~~

9 ~~———— (6) to describe conditions under which the accumulation of earnings and profits of those insurers~~
 10 ~~described in [section 6] do not have the substantial purpose of avoidance of taxes on, according to, or measured~~
 11 ~~by income of this state or any other state.~~

12

13 ~~———— **Section 8.** Section 33-2-705, MCA, is amended to read:~~

14 ~~———— **"33-2-705. Report on premiums and other consideration -- tax.** (1) Each authorized insurer and each~~
 15 ~~formerly authorized insurer with respect to premiums received while an authorized insurer in this state shall file~~
 16 ~~with the commissioner, on or before March 1 each year, a report in a form prescribed by the commissioner~~
 17 ~~showing total direct premium income, including policy, membership, and other fees, premiums paid by application~~
 18 ~~of dividends, refunds, savings, savings coupons, and similar returns or credits to payment of premiums for new~~
 19 ~~or additional or extended or renewed insurance, charges for payment of premium in installments, and all other~~
 20 ~~consideration for insurance from all kinds and classes of insurance, whether designated as a premium or~~
 21 ~~otherwise, received by a life insurer or written by an insurer other than a life insurer during the preceding calendar~~
 22 ~~year on account of policies covering property, subjects, or risks located, resident, or to be performed in Montana,~~
 23 ~~with proper proportionate allocation of premium as to property, subjects, or risks in Montana insured under~~
 24 ~~policies or contracts covering property, subjects, or risks located or resident in more than one state, after~~
 25 ~~deducting from the total direct premium income applicable cancellations, returned premiums, the unabsorbed~~
 26 ~~portion of any deposit premium, the amount of reduction in or refund of premiums allowed to industrial life~~
 27 ~~policyholders for payment of premiums direct to an office of the insurer, all policy dividends, refunds, savings,~~
 28 ~~savings coupons, and other similar returns paid or credited to policyholders with respect to the policies. As to title~~
 29 ~~insurance, "premium" includes the total charge for the insurance. A deduction may not be made of the cash~~
 30 ~~surrender values of policies. Considerations received on annuity contracts may not be included in total direct~~

1 premium income and are not subject to tax.

2 ———(2) Coincident with the filing of the tax report referred to in subsection (1), each insurer shall pay to the
3 commissioner a tax upon the net premiums computed at the rate of 2 3/4%.

4 ———(3) That portion of the tax paid under this section by an insurer on account of premiums received for fire
5 insurance must be separately specified in the report as required by the commissioner, for apportionment as
6 provided by law. When insurance against fire is included with insurance of property against other perils at an
7 undivided premium, the insurer shall make a reasonable allocation from the entire premium to the fire portion of
8 the coverage as must be stated in the report and as may be approved or accepted by the commissioner.

9 ———(4) With respect to authorized insurers, the premium tax provided by this section must be payment in
10 full and, except as provided in [sections 1 through 7], is in lieu of all other demands for any and all state, county,
11 city, district, municipal, and school taxes, licenses, fees, and excises of whatever kind or character, excepting
12 only those prescribed by this code, taxes on real and tangible personal property located in this state, and taxes
13 payable under 50-3-109.

14 ———(5) Insurers paying a premium tax under subsection (2) and holding a certificate pursuant to Title 90,
15 chapter 10, may redeem the certificate under the terms of 90-10-304 as a credit against the premium tax after
16 excluding the portion of premiums identified in subsection (3).

17 ———(6) The commissioner may suspend or revoke the certificate of authority of any insurer that fails to pay
18 its taxes as required under this section.

19 ———(7) In addition to the penalty provided for in subsection (6), the commissioner may impose upon an
20 insurer who fails to pay the tax required under this section a fine of \$100 plus interest on the delinquent amount
21 at the annual interest rate of 12%.

22 ———(8) The commissioner may by rule provide a quarterly schedule for payment of portions of the premium
23 tax under this section during the year in which tax liability is accrued."
24

25 **NEW SECTION. Section 8. Severability.** If a part of [this act] is invalid, all valid parts that are severable
26 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part
27 remains in effect in all valid applications that are severable from the invalid applications.
28

29 **NEW SECTION. Section 9. Codification instruction.** [Sections 1 through 7] are intended to be codified
30 as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 1 through

1 7].

2

3 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

4

5 NEW SECTION. **Section 11. Retroactive applicability.** [This act] applies retroactively, within the
6 meaning of 1-2-109, to tax years beginning after December 31, 2006.

7

- END -